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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 221

WASHINGTON PENSION UNION,

Petitioner,

vs.

THE STATE OF WASHINGTON, ON THE RELATION OF DANA T. ROBINSON

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Washington Pension Union, a corporation, intervenor in the court below and petitioner herein, prays that a Writ of Certiorari be issued to review the judgment of the Supreme Court of the State of Washington which ordered the issuance of a writ of mandate to compel respondent to pay a warrant drawn by the State Auditor on the State Treasurer in favor of relator. That judgment was entered on May 14, 1948, on which date Petition for Rehearing was denied (R. 116).

Opinion of the Court Below

The opinion of the Supreme Court of the State of Washington, along with the dissenting opinions, is reported in 130 Wash. Dec. 179. The court's opinion appears in this record at R. 54 and the dissenting opinions at R. 86 and 98. The order denying rehearing is reported in 130 Wash. Dec. 673 (R. 116).

Summary and Short Statement of Matter Involved

Petitioner Washington Pension Union (hereinafter designated as the "Pension Union") is a corporation organized and existing under the laws of the State of Washington as a social, charitable and educational society, with a membership throughout the State of Washington of approximately 16,000. Petitioner carries on a lawful business in the State of Washington as a service and information organization rendering general assistance and advice on matters of public assistance benefits and public assistance legislation (R. 11). Such information and advice is furnished not only to members of the Pension Union but also to state officials, legislators and to the public generally (R. 11).

The activities of the Pension Union necessarily and primarily consist of the exercise of speech, press, advocacy, assembly and petition on matters of public concern and for legislative and social welfare purposes (R. 11, 24). The effective exercise of these constitutional rights has been substantially facilitated by, and necessarily depend in large measure upon, the prestige of the Pension Union in the many communities of the State of Washington, the widespread reliance on the information supplied and ideas advocated by Pension Union, and the cooperation it receives from officials, legislators, individuals and organizations throughout the State of Washington (R. 11, 24, 25, 50).

This case involves the constitutionality under the due process and equal protection clauses of the Fourteenth

Amendment to the U. S. Constitution, of House Concurrent Resolution No. 10 of the 1947 legislature of the State of Washington, Laws of 1947, p. 1378 (R. 5 *et seq.*; R. 54 *et seq*), on its face and as it was construed and applied to petitioner by the Joint Legislative Fact-finding Committee on Un-American Activities in the State of Washington (hereinafter designated as the Joint Committee) which was established thereby. The constitutional questions were squarely raised by the petitioner as Intervenor in the case under review by supporting, on constitutional grounds, the refusal of the State Treasurer of the State of Washington to pay a warrant drawn to defray certain expenses incurred on behalf of the Joint Committee.

The Joint Committee was essentially empowered in vague and ambiguous terms of no specific content to investigate;

> "Groups or organizations whose activities are such as to indicate a purpose to foment internal strife, discord and dissension; infiltrate and undermine stability of our American institutions; confuse and mislead the people, and impede the normal progress of our state and nation either in a war time or peacetime economy; . . ." (R. 5, 6).

To the degree that this language has any content, it opens the door to the Joint Committee for political attacks upon individuals and organizations which happen to meet its capricious displeasure. The political and discriminatory nature of the grant of power to the Committee is indicated by the mandate "to investigate the activities of groups and organizations whose membership includes persons who are Communists . . . which activities affect the conduct of this state . . . or any political program" (R. 6).

That the above language purports to give power to "investigate" activities protected by the First and Fourteenth Amendments to the U. S. Constitution is self-evident. The

intention, moreover, is explicit in Concurrent Resolution 10. In the first "WHEREAS" clause reference is made to "persons and groups" who "under cover of the protection afforded by the bill of rights . . . seek to destroy our liberties." In the second "WHEREAS" clause there is reference to "Communist influence" in "some newspapers, books, radio and screen, some churches, schools, colleges and even fraternal orders . . . ." (R. 5).

That the constitutional and lawful activities of the Pension Union were to be the specific object of the Joint Committee's attack is evidenced by the purported authority to investigate organizations whose activities affect "unemployment relief and other forms of public assistance." The facts which follow establish that the Joint Committee construed and applied Concurrent Resolution 10 so as to interfere with, impede and obstruct the lawful and constitutionally guaranteed activities of the Pension Union with the intent to destroy the Pension Union and eliminate its influence in legislative and social welfare matters in the State of Washington.

On or about January 10, 1948, the Joint Committee announced by newspaper release throughout the State of Washington that it would:

> "1. Bring to public attention the facts gathered by the Committee's investigating staff relating to the Communist seizure and control of the state organization of the Washington Pension Union whose thousands of pension members receive virtually their sole subsistence from state tax funds.
>
> "2. Expose the pattern and purpose of the Communist conspiracy in the state and its cooperative relationship with the world-wide Communist conspiracy which seeks the destruction of the historical constitutional form of government of the United States.

"3. Expose the manner in which the Communist leadership of the union has subverted the interests and betrayed the trust of the bona fide recipients of the state pensions funds and callously duped them into giving support and assistance to Communist Russian foreign policies in conflict with and to the detriment of the United States" (R. 12).

The legislative committee then proceeded to hold public hearings in Seattle, Washington, where petitioner maintains its main office and principal place of business, and presented numerous false and defamatory statements about petitioner in accordance with its announced intentions. Petitioner was given no opportunity to reply to said statements, to cross-examine those making the statements, or in any way to elicit the truth and protect itself from the ensuing damage (R. 13).

This direct attack upon petitioner with false and defamatory charges all of which were given widespread publicity and were carried on under guise of State authority have seriously damaged petitioner in the conduct of its lawful business. Besides damaging petitioner financially and damaging its reputation, this governmental action placed an undue burden on petitioner's right to keep the public and its members informed of its activities and to obtain public support for the ideas it advocates on matters of public concern. Thus, the action of the Joint Committee constituted a direct interference with the exercise by petitioner of its constitutional rights to freedom of speech, of the press, of assembly and of social welfare action, and deprived petitioner of the equal protection of the law and of liberty and property contrary to the Fourteenth Amendment to the United States Constitution.

This proceeding was started directly in the Supreme Court of the State of Washington upon relator's application for a writ of mandamus to compel respondent State

Treasurer to pay a warrant drawn on State funds to pay relator for services rendered to the Joint Committee (R. 1). Petitioner is in reality the main party in interest in this action. The money expended for the hearings was being used to directly damage petitioner in the manner above set forth. For this reason petitioner was permitted to intervene as a party (R. 34).

The Supreme Court of the State of Washington ignored petitioner's argument that Concurrent Resolution 10 on its face and as construed and applied to petitioner, denies petitioner equal protection of the laws and deprives petitioner of liberty and property without due process in violation of the Fourteenth Amendment.

The State Supreme Court, sitting *en banc*, entered judgment that a writ of mandate should issue (R. 116) pursuant to opinion of the court (R. 54, 130 Wash. Dec. 179). The writ was issued ordering the funds to be paid by respondent (R. 113). The State Supreme Court thus upheld the validity of Concurrent Resolution 10 and of the activities of the Joint Committee in applying the Resolution to the petitioner over the objection of unconstitutionality which had been urged. Three justices dissented (R. 86 and 98). Intervenor's petition for rehearing was denied by the State Supreme Court (R. 116, 130 Wash. Dec. 673).

Jurisdiction

The Jurisdiction of this Court is invoked under section 237 (b) of the Judicial Code, as amended by Act of February 13, 1925, c. 229, sec. 1, 43 Stat. 937 (28 U. S. C. A. sec. 344 (b)).

The validity of Concurrent Resolution 10, an act of the Washington State Legislature, on its face and as construed and applied, was drawn in question on the ground that it was repugnant to the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States. These federal questions were raised

timely and were passed upon by the Supreme Court of the State of Washington in which Court this action was instituted as an original proceeding. Petitioner intervened directly in that proceeding and was granted leave to file a brief on or before the original return date (R. 34). Petitioner's petition, the only required pleading, and brief as Intervenor were before the court below at the one and only hearing that was had on this matter. The federal questions raised herein were directly urged upon the State Supreme Court in the Brief of Intervenor (R. 43 to 53) which, because of the nature of this proceeding and petitioner's status as an Intervenor, served as well as the pleading of the Intervenor.

The denial of equal protection of the laws under the Fourteenth Amendment was specifically raised (R. 46) as was the denial of due process (R. 46, *et seq.*; R. 48 *et seq.*) and argued at length in the petitioner's brief. The petition in intervention also raised the federal questions, and alleged that House Concurrent Resolution No. 10 and the Joint Committee's action thereunder violated the Fourteenth Amendment (R. 14, 20, 21).

Intervenor's Petition for Rehearing directly urged upon the State Supreme Court that the federal questions previously raised were of merit and requested that "a more thorough consideration be given to the basic constitutional questions presented."

The judgment of the State Supreme Court and the order denying rehearing necessarily denied petitioner's claim of constitutional right. The court directly upheld the validity of the Concurrent Resolution and as it was applied in the hearings conducted by the Joint Committee. The State Supreme Court did not discuss the Federal Constitutional issues raised by petitioner. It ruled upon them adversely with the terse comment: "No other questions of substantial merit are presented" (R. 85).

Statute Involved

The act of the state legislature, the validity of which is involved, is House Concurrent Resolution No. 10 of the 1947 legislature of the State of Washington (Laws of Washington for 1947, p. 1378). The resolution is set forth verbatim in the opinion of the Washington State Supreme Court (R. 54 to 59) and in Appendix A to the petition of Intervention R. 5-9).

Questions Presented

1. Whether a state legislative committee under a vague and sweeping mandate including in its ambit the investigation of the exercise of constitutional rights of speech, press and assembly and related rights by organizations engaged in influencing public opinion on matters of public concern may without violating the due process clause of the Fourteenth Amendment publicly condemn and vilify such organizations for political reasons alone and by issuing releases to the press and holding alleged hearings at which the organizations condemned are given no notice of charges or hearing and are given no opportunity to answer and defend, and may seek to destroy the effectiveness of such organizations in advocating legislation and social action; and whether a state may, without violating the due process clause of the Fourteenth Amendment authorize the expenditure of state funds for such purpose.

2. Whether a state legislature may, without violating the equal protection of the laws clause of the Fourteenth Amendment, authorize the legislative investigation of organizations which *inter alia* "affect" . . . "unemployment relief and other forms of public assistance . . . or any political program" solely because the membership of such organizations "includes persons who are Communists"; and whether a state can constitutionally authorize the expenditure of state funds for such purpose.

Reasons Relied On for the Allowance of the Writ

The Pension Union and its 16,000 members, as has been noted, is engaged in the dissemination of information and the advocacy of legislative measures and social action in support thereof. It is of special and public importance that the members of the Pension Union and those state officials, organizations and the many individuals who co-operate with it, be assured that they may continue in such activities in free association with others who desire to do so, regardless of their political beliefs or philosophy, without being subject to public condemnation and vilification by an official agency of the state, in the form of a legislative committee. Such condemnation is necessarily fraught with danger to the Pension Union, its members and supporters, and threatens their security, livelihood and right to exercise their civil and constitutional rights without undue burden. The very democratic process is threatened when concerted action in the welfare, educational and legislative fields is restricted and when persons who participate in matters affecting their economic and social welfare may do so only on the pain of ostracism.

The decision of the Supreme Court of the State of Washington is not in accord with the applicable decisions of this Court. Concurrent Resolution 10 as construed and applied to petitioner substantially abridges freedom of speech and of the press and the dissemination and advocacy of ideas, beliefs and political programs and denies equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution. The decision conflicts with the consistent holdings of this Court. For example: *Lovell* v. *City of Griffin*, 303 U. S. 444, 58 S. Ct. 666, 82 L. Ed. 949; *Grosjean* v. *American Press Co.*, 297 U. S. 233, 56 S. Ct. 444, 80 L. Ed. 660; *De Jonge* v. *Oregon*, 299 U. S. 353, 57 S. Ct. 255, 81 L. Ed. 278; *Bridges* v. *California*, 314 U. S. 252, 62 S. Ct. 190, 86 L. Ed. 192.

The action of the Joint Committee taken allegedly under Concurrent Resolution 10 is a direct attack upon petitioner's right to carry on its activities free from hindrance. By libeling and slandering petitioner and by condemning petitioner under the guise of state legislative action, petitioner's constitutional right of free expression of ideas, of freedom of thought, and of freedom of political activity is directly abridged.

This legislative enactment shows on its face, both in its preamble and provisions, that it aims at restricting and suppressing political activity and the free dissemination and advocacy of ideas by those out of favor with the legislature. The very purpose of the constitutional guarantees of these liberties is to protect dissident opinion from attack by those who happen to be in power. The legislature states that "these are times of public danger." It is in such times that extra vigilance is needed to protect our sacred rights. *De Jonge* v. *Oregon*, 299 U. S. 353, 57 S. Ct. 255, 81 L. Ed. 278.

The legislative enactment is clearly aimed at intimidating, discouraging and suppressing the expression of certain ideas. The first WHEREAS clause by its recitation of public danger and by mentioning subversive persons and groups indicates the aim to suppress and the intended appeal to public passion and prejudice. The clause then proceeds to say that these persons and groups are "seeking to destroy our liberties," under cover "of the protection afforded by the bill of rights." The implication is clear that the authorized investigation cast aside or ignored this protection. The second WHEREAS clause makes it clear that it is an alleged Communist "influence," which is to be suppressed or eliminated. Explicitly the dissemination of ideas is the object of the proposed suppression. The "propaganda" of the Communists and the Communist "influence" in "newspapers, books, radios and on the screen, some churches,

schools, colleges and even fraternal orders" are the apparent targets of the legislation as set forth on its face.

That such expression of ideas by a legal political party is not a proper subject for restrictive legislation is so clear that it almost needs no citation of authority. The authorities cited with more specific application hereafter all bear out this fundamental general proposition. But it would be wholly unrealistic to conclude that the Communist Party and its members are the sole or even the principal objective. The un-American legislative investigating committees, national and state, have indicated that in their use of the words "subversive," "un-American" or "Communist," they include all those who advocate changes in the *status quo* in the direction generally regarded as progressive, no matter how limited the objective or how peaceful the course pursued. It matters not whether it be the repeal of the poll tax, a law against lynching, public housing, price control which is advocated, or more effective public assistance as the petitioner advocates.

Clearly the legislature could not make illegal by a blanket enactment the expression of ideas, which is the aim of the investigation authorized by Concurrent Resolution 10. The legislature in this case has merely selected a more devious means of suppression, but one equally as effective as a direct prohibitory statute, if not more so. By this method, no opportunity to defend is given.

The public announcement of the Joint Committee, which heralded the attack upon petitioner (R. 12), shows how the Pension Union as a target of the Committee's inquiry was even before hearing, publicly branded as engaged in a criminal conspiracy which seeks nothing less than the destruction of the government itself.

Can there be any doubt of the effectiveness of this unverified public barrage, in destroying the activities of the Pension Union and of the public confidence which it has

engendered over many years. Yet an organization becomes the helpless victim of this state action merely if in the opinion of the members of the Joint Committee it is deemed to "infiltrate and undermine the stability of our American institutions"; or if it is suspected that it is seeking to "confuse and mislead the people" (whatever these expressions mean), or if it has Communists in its membership.

A program of public vilification and condemnation when carried on by the authority of the state legislature is a most effective means by which a State can suppress and stifle the expression of dissident opinions or political activity which opposes those in power. Particularly is this true when such activity is linked with a minority party which has been subject to repeated attacks. An individual or group which continues to express such dissident views or to engage in such political activity is faced with the inevitable result of suffering public disrepute. This means the loss of prestige and standing, injury to business and social relationships and often the loss of property and the means of livelihood —all without redress unless appropriate action is taken by this Court.

In a line of cases from *Kilbourn* v. *Thompson*, 103 U. S. 168 (1880) to *Jones* v. *Securities Commission*, 298 U. S. 1 (1935), this Court has held that governmental inquiry into thought and expression constitutes official action, as burdensome as direct prohibition (see, particularly, *Sinclair* v. *United States*, 279 U. S. 263 (1928) and *United States* v. *Ballard*, 322 U. S. 78, 1944). Governmental inquiry into speech and governmental classification of speech are themselves abridgments of speech (*United States* v. *Ballard*, 322 U. S. 78 (1944); *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940); *Thomas* v. *Collins*, 323 U. S. 516 (1945)).

Otherwise there would be a premium on the indirect, though real and substantial, state legislative encroachment

on constitutional rights. Direct prohibition of rights granted by the Constitution has been struck down by this Court. Shall this Court allow abridgment of constitutional rights merely because there has been no formal judgment and because a state legislative committee, run wild, has succeeded in curtailing such rights without benefit of due process to the person affected, with no formal finding or judgment, with no opportunity to defend or to appeal through statutory channels? Such sanction means in practical effect an end to government by law, based on and limited by the Constitution. It means a government of men, using political animus and caprice as the standards of condemnation. It means real though informal punishment. It means also the end of free discussion on vital matters which determine the course of our economy and the welfare of the people.

The applicable decisions of this Court do not allow such conclusion. (See cases cited, *supra.* Also, *West Virginia State Board of Education* v. *Burnette,* 317 U. S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628; *De Jonge* v. *Oregon, supra; Martin* v. *Struthers,* 319 U. S. 141, 63 S. Ct. 862, 87 L. Ed. 1313; *Thornhill* v. *Alabama,* 310 U. S. 141, 63 S. Ct. 862, 84 L. Ed. 1093; *Bridges* v. *California, supra.*)

The Washington Supreme Court decided, in effect, though not expressly that legislative authority granted to investigate an organization merely because "its membership included persons who are Communist," while organizations with similar objectives which did not have Communists in membership were immune from such investigation did not violate the equal protection of the laws clause of the Fourteenth Amendment. This discrimination against an organization because of the political views of some of its members is probably contrary to the applicable decisions of this Court and cannot be constitutionally sustained. *Barbier* v. *Connolly,* 113 U. S. 27, 32; *Yick Wo* v.

Hopkins, 118 U. S. 356, 369; *Truax* v. *Corrigan,* 25 U. S. 312, 331; *Gaines* v. *Canada,* 305 U. S. 337, 350; *Skinner* v. *Oklahoma,* 316 U. S. 535, 537.

The Communist Party is a legal political party in the State of Washington. *State ex rel. Huff* v. *Reeves,* 5 Wn. (2d) 637. This was one of the determining factors in holding that the dissemination of Communist ideas could not be illegalized by a state. *Herndon* v. *Lowry,* 301 U. S. 242, 57 S. Ct. 732, 81 L. Ed. 1066. See also *De Jonge* v. *Oregon, supra*; *cf. State ex rel. Communist Party of the U. S.* v. *Peek,* 20 Cal. (2d) 536, 127 P. (2d) 889.

The law is well settled that an act establishing a legislative committee must provide a legitimate legislative objective for the committee to pursue and that an attempt by the legislature to establish a committee to go beyond legitimate legislative purposes is void. *Kilbourn* v. *Thompson,* 103 U. S. 168, 26 L. Ed. 377; *Ex parte Caldwell,* 138 Fed. 487.

It is clear that the attack upon petitioner could serve no legislative purpose and was not intended to do so. The attack was political as the resolution which authorized it intended it to be. It is apparent also that by honoring the warrant of the State Auditor the Supreme Court of Washington was putting its sanction on the political witch hunt of which the Pension Union was the victim. In this connection it should be noted that the judgment of the Washington Supreme Court made possible the continued unconstitutional activity of the Joint Committee—money to operate is its life blood. The petitioner was the direct victim of the expenditure of state funds. Hence the Washington Supreme Court recognized the right of the Pension Union to intervene. Granted this intervention recognizing that the Washington Pension Union was the real party at interest, that Court was bound to protect the rights guaranteed to the Pension Union under the Fourteenth Amendment from encroachment by the Joint Committee.

This Court has not heretofore determined the limit which the United States Constitution imposes upon the action of state legislatures in authorizing legislative committees to conduct investigations largely, if not exclusively, in the field protected by the First Amendment, and by the Fourteenth Amendment; nor has this Court determined the constitutional limit upon the action of such committees to condemn and vilify organizations, solely for political reasons, by the publication of defamatory material, through press releases or hearings held without notice, or opportunity to be heard and defend by the organization attacked.

Conclusion

The Writ of Certiorari should be granted.

Respectfully submitted,

ABRAHAM J. ISSERMAN,
133 West 44th Street,
New York, New York;
STANLEY C. SODERLAND,
2013 Smith Tower,
Seattle 4, Washington;
CAUGHLAN & HATTEN,
411 New World Life Bldg.,
Seattle 4, Washington,
Counsel for Petitioner.

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